

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

**Case 01:10-CV-00513-NAM-RFT**

Plaintiff,

-against-

MATTHEW JOHN RYAN and  
PRIME RATE AND RETURN, LLC,  
individually and doing business as  
AMERICAN INTEGRITY FINANCIAL CO.,

Defendants.  
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**NOTICE OF MOTION OF RECEIVER FOR AUTHORITY TO ABANDON REMAINING  
ASSETS, TO PAY COMPENSATION AND REIMBURSEMENT OF EXPENSES, TO  
APPROVE A FINAL ACCOUNTING AND TO TURN OVER REMAINING FUNDS TO  
THE SECURITIES AND EXCHANGE COMMISSION FOR DISTRIBUTION TO  
CREDITORS**

PLEASE TAKE NOTICE THAT Receiver Paul A. Levine, Esq. (the "Receiver"),  
through his attorneys Lemery Greisler LLC, has filed the attached motion with the Court  
seeking an order granting him authority to:

- a. Abandon Remaining Assets as having little or no value for unsecured  
creditors in this case;
- b. To pay compensation and reimbursement of expenses;
- c. To approve a final accounting; and
- d. To turn over remaining funds to the Securities and Exchange Commission

Those having objections to the requested relief should file such objections with  
the Court and serve the Receiver's undersigned attorneys.

If objections are filed, the Court may choose to schedule a hearing on the motion.

If no objections are filed, the Court may grant the requested relief without a hearing.

Dated: September 25<sup>th</sup>, 2012

Respectfully submitted,

LEMERY GREISLER LLC

By: /s/ Paul A. Levine  
Paul A. Levine, Esq.  
Northern District of New York  
Bar Code 103578  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

**Case 01:10-CV-00513-NAM-RFT**

Plaintiff,

-against-

MATTHEW JOHN RYAN and  
PRIME RATE AND RETURN, LLC,  
individually and doing business as  
AMERICAN INTEGRITY FINANCIAL CO.,

Defendants.

**MOTION OF RECEIVER FOR AUTHORITY TO ABANDON REMAINING ASSETS, TO  
PAY COMPENSATION AND REMIBURSEMENT OF EXPENSES, TO APPROVE A  
FINAL ACCOUNTING AND TO TURN OVER REMAINING FUNDS TO THE  
SECURITIES AND EXCHANGE COMMISSION FOR DISTRIBUTION TO CREDITORS**

Receiver Paul A. Levine, Esq. (the "Receiver"), through his attorneys Lemery  
Greisler LLC, respectfully moves the Court for an order granting him authority to:

- a. Abandon Remaining Assets as having little or no value for unsecured  
creditors in this case;
- b. To pay compensation and reimbursement of expenses;
- c. To approve a final accounting; and
- d. To turn over remaining funds to the Securities and Exchange Commission.

**INTRODUCTION**

1. This Securities and Exchange Commission ("SEC") enforcement action  
was commenced on May 3, 2010. Dkt. No. 1
2. On an ex parte basis, the SEC obtained from this Court a Temporary  
Restraining Order (the "TRO") which imposed an asset freeze on  
Defendants Matthew John Ryan ("Ryan") and Prime Rate and Return LLC



("Prime") individually and doing business as American Integrity Financial Co. Dkt No. 6.

3. The TRO appointed Paul A. Levine as temporary receiver and, among other powers, authorized him to retain "[e]ngage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the receiver's duties and responsibilities hereunder."
4. As previously reported by the Receiver, the primary assets of the receivership estate were numerous parcels of mixed used and multi-family real estate located in the Cities of Albany, Troy and Cohoes, New York.
5. The parcels were set forth at Exhibit "A" to the TRO<sup>1</sup>
6. On June 7, 2010, the Court entered its Stipulation and Consent Order Imposing Preliminary Injunction and Other Relief Against Defendants (the "Preliminary Injunction"). Dkt No. 11.
7. Among other provisions, the Preliminary Injunction provided that the Receiver with broad powers to preserve and Prime's assets.
8. With respect to sales of property have a cost basis of \$100,000.00 or more, the Preliminary Injunction provided that the Receiver shall seek court approval on at lease four (4) business days notice to Ryan and others who have filed notices of appearance in the case.
9. On the Receiver's motion, by Memorandum – Decision and Order entered May 3, 2011(Docket No. 75) (the "Property Liquidation Order"), the Court granted the Receiver authority to begin liquidating the many parcels of

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<sup>1</sup> The parcel known as 125 Wolf Road, Albany was not a parcel owned by defendants but was, rather, simply an address one or both rented some time in the past.

marginal real estate owned by defendants. In part, the Court found that "in view of the nature of this action, the minimal equity in the properties and the difficulties involved in administering and maintaining them, the court finds that granting the Receiver the flexibility he seeks is fair and reasonable, and will best protect the victims of defendants' criminal securities fraud."

10. To date, the Receiver has liquidated all available personal property of defendant Prime Rate with any value, has investigated the affairs of Prime Rate to the extent practical and in light of the Plaintiff's prior extensive investigation and has liquidated most of the real estate he was charged with administering. During this time period the Receiver also administered numerous rental properties which required him to deal with a myriad of issues such as leasing, repairs, code violations and various tenant matters.
11. As will be detailed below, the Receiver was able to realize significant monies from the real estate despite the fact that the property was, uniformly, over encumbered far beyond any reasonable value, in disrepair, often with code violations.
12. During the course of his service, the Receiver personally spoke with many victims and their attorneys and other parties in interest.
13. The Receiver maintained a website to keep interest parties informed ([www.primerateandreturnreceiver.com](http://www.primerateandreturnreceiver.com)).



**REQUESTED RELIEF**

**a. Abandonment of Remaining Real Property and  
Personal Property with Limited Exception**

**i. Real Estate**

14. Pursuant to the Property Liquidation Order, the Receiver undertook extensive efforts to sell and otherwise dispose of the many parcels of real property subject to his authority.
15. As detailed extensively in the Receiver's prior motion, the properties were in varying states of disrepair with unpaid real property taxes and were over leveraged with high interest loans.
16. None of the properties had a fair market value close to the combined liens of unpaid real property taxes and mortgages.
17. Nonetheless, through the hard work of his realtor and property manager, the Receiver was able to sell many of the properties and, despite the fact that all sales were short sales (where the sales price was less, often far less, than the mortgage debt), was able to realize monies, albeit in modest amounts, for the receivership estate.
18. Further, during his stewardship, the Receiver was able to respond to code violations, maintain the properties and was able, in many cases, to transfer them to responsible purchasers all for the benefit of the receivership estate, tenants and the community at large.
19. Attached as Exhibit "A" is a summary report of the disposition of real property.

20. As summarized, certain of the properties which were financed under a land contract (where the defendants did not have title to the properties) were returned to the land contract vendors who insisted on such a treatment.
21. Despite extensive efforts, the Receiver was not able to liquidate some of the properties as set forth on Exhibit "A."
22. The Receiver requests permission to allow secured lenders and taxing authorities to pursue their liens as they may deem appropriate.
23. The only tenants that are occupying any property still subject to the Receiver's authority reside at 190 Delaware Avenue, Albany. The Receiver has discussed the situation with the attorney for the mortgage holder on the property who has already petitioned this Court for permission, with the Receiver's consent, to proceed with a foreclosure. The lender, should the Receiver's motion to this Court be granted, can seek the appointment of a state court receiver of rents in the state court foreclosure action it will commence.
24. The Receiver cannot sell this particular property because it is owned by Matthew Ryan personally and, as a result, the forfeiture order in the related criminal case against Mr. Ryan presents an insurmountable title objection.

#### **ii. Personal Property**

25. As to personal property, as reflected on the attached auctioneer reports of sale, the personal property of the Receivership estate in the nature of



vehicles, office furniture and artwork as all been liquidated at auction sales conducted by a well-respected local auction house. Exhibit "B-1" – "B-3."

26. The Receivership estate is the holder of a secured proof of claim in the amount of \$50,000.00 against the Chapter 11 estate of Hormi Holding Company, Inc., pending the United States Bankruptcy Court for the Central District of California (Case No. 10-22788). The claim is against real property commonly known as 17 First Street, Troy, New York. Pursuant to Mr. Horowitz's confirmed Chapter 11 plan, the property is on the market and, upon information and belief, there is enough value in the property such that the Receiver's secured claim should be paid in full. Upon receipt of any such payment, the Receiver purposes to turn over the monies to the SEC for distribution as described below.

**b. To Pay Compensation and Reimbursement of Expenses**

27. The Receiver has served since May 3, 2010, a period of well over two years without compensation or reimbursement of expenses.
28. The Receiver and his law firm have expended, as detailed on the attached time and billing records, in excess of \$76,856.15 in legal time through July 31, 2012. Of course, the Receiver continues to expend time and effort on this matter.
29. Detailed time records are attached hereto as Exhibits "C" through "I".
30. In addition, substantial non-attorney resources of the Receiver's law firm have been devoted to the administration of the matters under the Receiver's responsibility.



31. The Receiver's assistant Patricia Hartl has ably assisted the Receiver by maintaining the Receiver's banking records and other financial records, has assisted the Receiver in interfacing with his real property management company, received mail on the case (initially a large volume as the Receiver had certain mail redirected) and has otherwise maintained the Receiver's files and assisted the Receiver with his various duties. See accompanying affidavit.
32. Risa Legg, an experienced legal assistant with many years of real estate experience, has spent countless hours assisting the Receiver with the numerous real estate closings involved in this case. Due to the nature of the properties, the issues presented by the Receivership itself, judgments on properties, the short sales, cross collateralizations of several of the mortgages across several of the properties and other issues, none of the closings can be characterized as "routine." Mrs. Legg ably assisted the Receiver by preparing the closings and in continuously following up with buyers, realtors, title companies and with mortgage holders. Due to the fact that most of the closings were short sales, the Receiver needed to obtain short sale approval from national lenders and private lenders. This was not an easy task. Mrs. Legg was diligent in documenting the reasons for the short sale requests and in obtaining short sale approvals. See accompanying affidavit.
33. Additionally, David Edsforth, a legal assistant with the firm also provided significant assistance to the Receiver in the nature of cataloguing the

defendants' books and records, removing art work for safe keeping, assisting the SEC with certain inquiries, arranging access to certain of the premises to interested parties, assisting on matters concerning vehicles and otherwise providing able assistance to the Receiver in the pursuit of his charge.

34. In summary, the Receiver requests compensation in the amounts of: (i) one third of monies held by the Receiver as of the date an order may be entered on this matter (as of August 31, the Receiver held \$113,553.22, which would equate to a fee of \$37,851.07); and (ii) one third of monies anticipated to be recovered from the sale of the 17 First Street, Troy, New York property on which the Receiver has a secured claim recognized in the Chapter 11 bankruptcy of Sandy Horowitz (see ¶ 26 above). Thus the total fee, in the best case, would be \$54,517.74 (1/3 of monies on hand plus \$16,666.67); far less than the value of the actual legal time, not to mention legal assistant time, expended.
35. Of the gross fees incurred by the Receiver (see Exhibits C to I) on an hourly billing basis, the requested compensation represents significantly less than the actual value of legal services provided.
36. It has been the Receiver's historical practice in almost 17 years of serving as a Chapter 7 bankruptcy trustee to limit his requests for compensation, when needed, to approximately one-third of funds on hand or anticipated to be collected. The Receiver believes that this approach, as applied in this case, is fair, reasonable and protects the interests of the victims of Mr.



Ryan's admitted fraud while providing fair, albeit less than market rate, compensation to the Receiver for his lengthy service.

37. Further, the Receiver is sharing the risk with the creditors of this case in not being compensated on what is hope to be an additional \$50,000.00 recovery from the sale of 17 First Street.
38. This fee request, and the motion generally, has been reviewed with the SEC prior to the filing of this motion.

**c. To Approve Final Accounting**

39. Attached hereto as Exhibit "J-1", "J-2" and "J-3" are copies of each bank statement (redacted as to account number) for the three accounts (real estate management, security deposit and general funds) maintained by the Receiver at First Niagara Bank, N. A.
40. As to the real estate account, attached hereto as Exhibit "K" is a "to date" summary of all income (primarily rentals) received by the Receiver and expenses paid. If needed, extensive detail on those items can be provided. It is important to note, of course, that the Receiver is the Receiver of Prime Rate, the entity which owned numerous properties, and was not appointed a receiver of any one of the properties. As a result, the Receiver took pains to conserve funds such that he would be able, as happened, to deal with exigencies at properties and to otherwise be prepared to address the varied and numerous issues which the properties presented on a regular basis.



41. As to the security deposit account, attached hereto as Exhibit "L" is a "to date" summary of all deposits and expenditures (i.e. refunds of security deposits) made by the Receiver. It is important to note that certain transactions as to security deposits were made in the context of credits and debits made at closing with buyers of properties and that Mr. Ryan admitted to the Receiver that he simply did not segregate security deposits as New York law required.
42. As the general account, attached hereto as Exhibit "M" is a "to date" summary of all deposits and expenditures made by the Receiver.
43. As previously described, the Receiver has not taken any compensation or reimbursement of expenses to date.
44. All expenses were proper and necessary for the prudent administration of the matters over which the Receiver was given responsibility.
45. The Receiver respectfully requests that his accounting be approved.

**d. Permission to Turn Over Remaining Funds to SEC for  
Distribution to Victims**

46. The Receiver has been informed that the SEC now has the capability to receive and distribute funds to victims of securities fraud.
47. Therefore, the Receiver requests permission to turn over all funds, once his compensation, if any, has been set and paid and any final bills incurred by the Receiver for property administration have been paid, to the SEC for distribution to victims and other creditors who may make claims.

48. It is respectfully suggested that such distribution be subject to further order of the Court upon the SEC making a motion on notice to interested parties outlining a proposed procedure for providing adequate notice to interested parties and procedures for filing claims. This request includes funds to be realized on the sale of 17 First Street, Troy.
49. The Receiver also believes that this approach will conserve funds available for such distribution as the Receiver will not have to incur additional legal fees and expenses in addressing such matters which the SEC is prepared to undertake.

#### **NOTICE OF THIS MOTION**

50. Notice of this motion is being served on Mr. Ryan via his federal correctional facility address. Notice of the motion is also being provided to Mr. Ryan's criminal attorney David Taffany, Esq., his former state court attorneys Bosman & Associates (Padric Moore, Esq.), to the SEC, to the Assistant United States Attorney involved in Mr. Ryan's criminal case and to other attorneys that the Receiver has had direct contact with even though they have not filed notices of appearances in the case.
51. These attorneys are: Edward Haddad, Esq., (for himself and Joel Glickman) Edward Marinstein, Esq. (for Winston); Stephen Greenblatt, Esq. (for JP Morgan), Timothy O'Connor, Esq. (who the Receiver understands represents various investors with respect to third party claims), Edward M. Connell, Esq. (for Capital Communications Federal

Credit Union), Joseph Rones, Esq. (for lenders on various properties) and all other attorneys who have appeared in the case.

### **CONCLUSION**

- 52. The Receiver has undertaken and completed all that can practically be expected under the circumstances of this unfortunate case.
- 53. All personal property has been liquidated at auction.
- 54. All real property, which could have simply been abandoned, was administered and offered for sale. In numerous instances, the Receiver was able to create value for the estate where the properties were grossly over encumbered by valid liens. Continued administration would only drain resources that otherwise can go to creditors.
- 55. The Receiver's accounting is proper in all respects.
- 56. And, the SEC is ready, willing and able to assume responsibility for distributing funds to creditors; a mission that appears consonant with its duties and watch dog role in such matters.

WHEREFORE it is respectfully requested that the Court:

- e. Authorize the Receiver to abandon Remaining Assets as having little or no value for unsecured creditors in this case;
- f. Authorize the Receiver to pay himself compensation and reimbursement of expenses as approved by the Court ;
- g. Approve the Receiver's final accounting;



- h. Authorize the Receiver to turn over remaining funds and funds to be received to the Securities and Exchange Commission for distribution to creditors upon further order of the Court after notice and hearing; and
- i. Grant such other and further relief as may be deemed just, necessary and proper.

Dated: September 25, 2012

Respectfully submitted,

LEMERY GREISLER LLC

By: /s/ Paul A. Levine  
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